

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY THOMAS BOYD,

Defendant-Appellant.

UNPUBLISHED

May 15, 1998

No. 194406

Macomb Circuit Court

LC No. 95-002927 FC

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka*, JJ.

PER CURIAM.

Defendant appeals by right his plea based convictions on two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and habitual offender, fourth felony offense, MCL 769.12; MSA 28.1084. We affirm.

Defendant initially entered a no contest plea to the charges that he committed criminal sexual misconduct on the ten-year-old daughter of his cousin. He subsequently withdrew this plea at the first date set for sentencing. Defendant later requested to reinstate his plea, which was accepted by the trial court. After defendant was sentenced to thirty-one to fifty years' imprisonment and filed a claim of appeal, he moved to withdraw his plea and moved for resentencing. The trial court denied the motions in a ruling from the bench.

Defendant argues that the trial court abused its discretion in denying his motion to withdraw his plea. We disagree. When a plea has been accepted by the trial court, there is no absolute right to withdraw the plea. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). When a motion to withdraw a plea is made after sentencing, the decision whether to grant it rests within the sound discretion of the trial court. That decision will not be reversed on appeal unless there is a clear abuse of discretion resulting in a miscarriage of justice. *People v Eloby (After Remand)*, 215 Mich App 472, 475; 547 NW2d 48 (1996).

* Circuit judge, sitting on the Court of Appeals by assignment.

The trial court did not fully comply with MCR 6.302 where it failed to ask if any threats or promises were made to induce the plea. Noncompliance with the court rules governing no contest pleas does not necessarily require reversal. Whether a particular departure from the rule requires additional proceedings will depend on the nature of the noncompliance. *Guilty Plea Cases*, 395 Mich 96, 113; 235 NW2d 132 (1975). Failure to ask a defendant if he was threatened does not mandate reversal where the trial court determined that defendant's plea was voluntary. *People v Mitchell*, 125 Mich App 475, 480; 336 NW2d 31 (1983).

Defendant asserts that the trial court erred in accepting his no contest plea without stating the reason for the plea and without holding a hearing as to the factual basis. The failure to recite the reasons why a no contest plea is appropriate is not the type of noncompliance with the court rule that warrants reversal. *People v Byrd*, 150 Mich App 624, 628; 389 NW2d 710 (1986). Defendant stipulated to the use of the police reports to establish the factual basis for the plea. The failure to hold a hearing was not a miscarriage of justice that resulted in substantial prejudice.

The trial court did not err in denying defendant's motion for resentencing. While defendant asserts that he was sentenced on inaccurate information, at the time of sentencing, he acknowledged that the presentence report was accurate. The objections that defendant raises on appeal are incidental and could not affect the length of the sentence imposed. Defendant was not deprived of the effective assistance of counsel where he was not prejudiced by counsel's failure to object to minor inaccuracies in the presentence report that would not affect the sentence. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

We affirm.

/s/ Richard A. Bandstra
/s/ Barbara B. MacKenzie
/s/ Nick O. Holowka